

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Verizon Request for Declaratory Ruling, or,
in the Alternative, for Partial Waiver,
Regarding the Handset Locking Rule for
C Block Licensees

WT Docket No. 06-150

**VERIZON’S REPLY IN SUPPORT OF ITS REQUEST FOR DECLARATORY RULING,
OR, IN THE ALTERNATIVE, FOR PARTIAL WAIVER**

Verizon has sought a targeted declaratory ruling, or in the alternative a partial waiver, of the handset locking rule that applies to C Block licensees in order to address the significant and rapidly growing problem of subscriber fraud and identity theft. Verizon demonstrated that this illicit activity significantly harms consumers and Verizon, costing more than *\$190 million in 2018*. And unfortunately this problem is growing rapidly: Verizon’s 2018 losses from handset fraud were up roughly 65% from 2017, and early 2019 losses are up 93% from the comparable 2018 period.¹ To combat this problem, Verizon seeks to adopt a temporary, 60-day lock on handsets it provides to ensure they are purchased by bona fide customers. This targeted, 60-day period will enable Verizon to determine whether a new device was obtained by a legitimate customer who makes the first payment on that device and that the payment clears processing. This is similar to, though narrower than, the locking practices of other large U.S. wireless carriers, except that unlike all other carriers Verizon will unlock the device automatically at the

¹ Verizon Request for Declaratory Ruling, or, in the Alternative, for Partial Waiver at 9, *Verizon Request for Declaratory Ruling, or, in the Alternative, for Partial Waiver, Regarding the Handset Locking Rule for C Block Licensees*, WT Docket No. 06-150 (filed Feb. 22, 2019) (“Verizon Petition”); *id.* Att. A, Declaration of Stephen Schwed ¶ 6 (“Schwed Decl.”).

end of the 60-day period, regardless of whether the device has been fully paid off by that time.

Thus, even after implementing this targeted approach, Verizon will continue to lead the wireless industry in platform and device openness.

The record supports that the requested relief would be good for consumers and benefit the public interest. For example, Public Knowledge supports Verizon's request for a waiver, noting (at 2) that "ultimately consumers pay for [fraud-related] losses with increased prices," and (at 7) "[p]reventing and deterring theft and fraud is in the public interest." Appalachian Wireless – a rural carrier that leases C block spectrum – also supports Verizon's petition, noting (at 2) that it, too, "has experienced a significant increase in device theft," and lamenting its inability to respond to this problem due to "the ambiguity of the language in the Handset Locking Rule."

Although two other wireless carriers oppose Verizon's waiver request, neither disputes the problems of fraud and identity theft that Verizon has described. These commenters instead argue that granting Verizon relief will undermine the objectives of the C Block rules as a whole, which include promoting innovation and competition. But not a single commenter provides any evidence or data to support the claim that the anti-theft approach described in our petition would somehow undermine these objectives. To the contrary, we demonstrated – and Public Knowledge and Appalachian Wireless agree – that the requested relief would enhance, not retard, wireless innovation and competition.

A few commenters oppose Verizon's request for a declaratory ruling. They claim that the Commission's handset locking rule is sufficiently clear that a declaratory ruling is not procedurally appropriate. But these same commenters offer competing definitions of the very terms they claim are unambiguous. Thus, these comments underscore the lack of clarity in the

Commission's rules and lend further support for a declaratory ruling, the purpose of which is to "remov[e] uncertainty." 47 C.F.R. § 1.2(a).

For these reasons, and as set forth in the petition, the Commission should grant Verizon the requested relief.

I. THE COMMISSION SHOULD GRANT A PARTIAL WAIVER OF RULE 27.16(e) TO ALLOW VERIZON TO IMPLEMENT ITS TEMPORARY LOCKING PROPOSAL

Verizon's petition demonstrated that the Commission should grant Verizon a partial waiver of the rule to implement its proposed approach to battling identity theft and fraud. As the petition explained, a partial waiver is strongly in the public interest because it will help reduce handset fraud and identity theft that are harming Verizon's customers, consumers generally, and Verizon itself. Verizon demonstrated, for example, that identity theft and first-party fraud cost Verizon and its customers approximately \$190 million in 2018, and that such losses are increasing, not even counting more difficult-to-quantify harms such as greater inconvenience to consumers and greater risk of identity theft.² Verizon also explained that a partial waiver would advance the policy rationales of the C Block rules, by better ensuring that even subscribers who decide to switch providers are legitimate, thereby promoting fairer competition across the entire wireless ecosystem.³

The record confirms that a waiver is in the public interest. For example, Public Knowledge states (at 7 n.14) that "Verizon has made the requisite showing that this potential barrier to switching carriers by legitimate customers is minimal compared to the considerable benefits to all customers of preventing wide-scale theft." Public Knowledge also acknowledges

² See Schwed Decl. ¶¶ 6-7.

³ See Verizon Petition at 17-18.

(at 7) that Verizon’s proposed policy will enable it “to combat fraud and theft in ways less restrictive than those imposed by other wireless carriers.” Appalachian Wireless – a rural carrier that serves “twenty-five counties in eastern Kentucky, two counties in Virginia and one county in West Virginia” – likewise supports Verizon’s request, and provides additional evidence that fraud and identity theft are harming consumers and carriers alike. It notes (at 3-4), for example, that individuals suffering from the opioid epidemic in its service territory “are especially susceptible to the tactics of recruiters in the credit muling schemes,” which “creates a very precarious and stressful situation for retail sales associates,” negatively impacting “employee morale and well-being.” The problem has become so acute that “Appalachian Wireless has also had several law enforcement personnel and prosecutors question Appalachian Wireless’ ‘decision’ not to lock its devices.” Appalachian Wireless Comments at 4. In sum, these commenters recognize that the requested waiver furthers the public interest through potential benefits to consumers and increased safety of wireless employees.

Although two commenters oppose Verizon’s waiver request, neither contests that rampant fraud is occurring or that the requested relief will help combat this fraud.⁴ Pine Belt argues (at 6) a waiver will harm rural consumers, based on its assertion that rural consumers’ “only hope of being able to take advantage of the latest and greatest mobile device” is by purchasing a device from Verizon and then immediately switching to a rural carrier that might have better service at the individual’s home or place of business. But Pine Belt fails to provide any support that rural customers behave in this manner, which is facially implausible. First, it is

⁴ Pine Belt states (at 9) that “new fraud prevention that results from the 60-day locking period will only capture a ‘small minority’ of remaining fraudsters.” But this “minority” of criminal actors are responsible for massive losses, and thus stopping this small minority will have outsized benefits.

highly unlikely that rural consumers (much less a large percentage of them) would go through the process of signing up for service with Verizon only to immediately switch their service to a rural carrier. As Verizon’s petition demonstrated, this almost never occurs.⁵ Second, Pine Belt fails to explain why customers in rural areas cannot obtain devices for use on rural wireless carriers’ networks in other, legitimate ways – such as purchasing through retail operations or directly from device manufacturers, rather than through Verizon. Verizon and other major wireless carriers typically provide new 4G LTE handsets at retail prices set by the manufacturer. As a result, Verizon’s proposed policy does not disadvantage rural carriers.

Without explaining any interest here other than disadvantaging a competitor, T-Mobile argues (at 4) that the Commission cannot grant a partial waiver to Verizon in this instance because it would completely “eviscerate” the rule. But a partial waiver for a 60-day period to reduce fraud hardly amounts to evisceration of the rule. Even after the waiver, Verizon’s handsets would still be more open than those sold by T-Mobile and other major wireless carriers. For example, it is T-Mobile’s policy not to unlock a device until a 40 day-waiting period has elapsed *and* the device has been fully paid off.⁶

T-Mobile is also incorrect (at 4) that a partial waiver is legally impermissible because “[t]here is nothing unique or particular about Verizon’s situation with respect to device locking; indeed, any C-Block licensee would have the same requirement to sell devices unlocked.” Verizon is in a distinct position as the *only* major carrier subject to the C Block locking restrictions. As the petition demonstrates, and as the record confirms, Verizon and its customers

⁵ Verizon Petition at 15; Schwed Decl. ¶ 18 (“Only a tiny fraction of Verizon customers port their numbers or change carriers within the first 60 days of service, meaning a temporary lock would, at most, impact a very small number of customers seeking to switch carriers.”).

⁶ Verizon Petition at 9-10 (citing T-Mobile, *Unlock Your Mobile Wireless Device*, <https://support.t-mobile.com/docs/DOC1588>).

therefore bear the disproportionate brunt of fraud and identity theft – with Verizon’s phones selling at a premium on the black market precisely because of its unique position.⁷ A waiver is therefore appropriate.

II. THE COMMISSION SHOULD DECLARE THAT VERIZON MAY LOCK PHONES TEMPORARILY TO REDUCE FRAUD AND IDENTITY THEFT

Alternatively, Verizon’s petition demonstrated that the Commission’s handset locking rule (47 C.F.R. § 27.16(e)) is unclear in two important respects. First, although the rule provides that no C Block licensee “may disable features on handsets it provides to customers,” the Commission’s rules do not define “customer” for purposes of the handset locking rule, nor has the Commission defined “customer” in this context. Second, although the rule prohibits a C Block licensee from “configur[ing] handsets it provides to prohibit use of such handsets on other providers’ networks,” it is not clear whether this prohibition applies when a handset that is otherwise “configured” to work on other providers’ network is locked only temporarily for purposes of preventing theft or fraud. As a result of these uncertainties, the Commission could address these issues through the requested declaratory ruling.⁸

A. The Commission Should Declare That Temporary Locking of Handsets To Reduce Fraud and Identity Theft Does Not Affect “Customers”

Verizon demonstrated that it would be reasonable for the Commission to declare that a “customer” is an individual who opens an account and obtains a new handset in good faith, with the intent to pay. Both Commission precedent in the tariff context⁹ and standard dictionary

⁷ Public Knowledge Comments at 7 (“Without the requested waiver, Verizon’s unlocked devices continue to disproportionately suffer from device theft and identity fraud, compared to other carriers’ locked phones.”).

⁸ 47 C.F.R. § 1.2 (Commission may “issue a declaratory ruling terminating a controversy or removing uncertainty”).

⁹ See, e.g., *AT&T Corp., Complainant, v. YMax Communications Corp., Defendant*, Memorandum Opinion and Order, 26 FCC Rcd 5742, ¶ 15 n.57 (2011); *American Satellite Corp.*

definitions¹⁰ support this interpretation. And it is particularly appropriate for the Commission to limit the definition of “customer” to someone “responsible for payment” in this context, where most consumers obtain new 4G LTE handsets on credit, some of whom have no intent to pay for the device but instead intend to commit fraud and resell the handset on the black market.

Several commenters argue that it would be legally improper for the Commission to issue a declaratory ruling because the definition of “customer” is unambiguous and leaves nothing for the Commission to clarify.¹¹ But these same parties’ comments prove just the opposite – that there are competing definitions of “customer,” demonstrating the need for the Commission to clarify its meaning. For example, Pine Belt (citing Merriam-Webster’s Dictionary) argues (at 3) that a “customer” is someone “that purchases a commodity or service,” and that to “purchase” is “to obtain by paying money.” This aligns with Verizon’s view that a customer relationship requires payment for a good or service. By contrast, T-Mobile argues (at 3) that “once someone signs a contract for service on Verizon’s network, the person is a ‘customer,’” suggesting that a customer is merely someone who signs an agreement to pay, regardless of whether there is any

v. MCI Telecommunications Corp., Memorandum Opinion and Order, 57 FCC2d 1165, ¶ 5 (1976) (“Section B:1 of the tariff provides that a customer is a ‘. . . person, firm, corporation or other entity which orders services and responsible for payment of charges and compliance with [] tariff regulations.”); *United Artists Payphone Corporation, Complainant, v. New York Telephone Company, and American Telephone and Telegraph Company, Defendants*, Memorandum Opinion and Order, 8 FCC Rcd 5563, ¶ 9 (1993) (“The term ‘customer’ is defined by the tariff as ‘the person or legal entity which orders [the service] (either directly or through an agent) and is responsible for payment of tariffed charges for services furnished to that Customer.’”).

¹⁰ See, e.g., BLACK’S LAW DICTIONARY 386 (6th ed. 1990) (defining a customer as “[o]ne who regularly or repeatedly makes purchases of, or has business dealings with, a tradesman or business. Ordinarily, one who has had repeated business dealings with another. A buyer, purchaser, consumer or patron.”).

¹¹ Pine Belt Comments at 4 (“The rule is clear on its face and there is no uncertainty to be resolved.”); Public Knowledge Comments at 3 (“the meaning of ‘customer’ and ‘configure’ are not ambiguous, as argued by Verizon . . .”); T-Mobile Comments at 3 (“there is no ambiguity in the word ‘customer’ in the rules”).

intent to pay. Double Perfect suggests an even broader definition under which any mere user of a wireless device, application, or service provider is a customer.¹² These comments illustrate that the definition of “customer” is ambiguous in this context, and that it is therefore both legally permissible and appropriate for the Commission to resolve that ambiguity in a declaratory ruling.

Some commenters argue that interpreting “customer” as someone “responsible for payment” would somehow undermine the Commission’s intent in promulgating the handset locking rule. But surely it was not the Commission’s intent to interpret customer in a manner that knowingly exposes C Block licensees – and their legitimate customers – to identity theft and fraud. In any event, as Verizon demonstrated, the order adopting the rule did not provide a specific rationale for the rule nor explain why it was needed. The order discussed handset locking only once – in a single footnote – which merely stated that handset locking is “one practice that *arguably* prevents consumers from migrating other technically compatible equipment from one wireless service provider to another,” and further noting that “[p]roviders claim that it is a practice designed to combat fraud.”¹³ In an effort to get around this fact, the commenters cite Commission statements regarding the rationales for the C Block rules as a whole – such as “encourag[ing] innovation in network devices and applications” and “promoting

¹² Double Perfect Comments at 5 (arguing that “wireless device users are customers of multiple parties, including device manufacturers, application providers, and wireless service providers”). Double Perfect’s comments contain a laundry list of irrelevant and misguided grievances against Verizon that have nothing to do with the handset locking rule or Verizon’s petition. Double Perfect has filed a complaint with the Commission containing many of these same baseless allegations, and that proceeding, not this one, is the appropriate forum in which to address those claims. *See Alex Nguyen v. Cellco Partnership & Affiliated Entities d/b/a Verizon Wireless*, Complaint, Proceeding No. 16-242, EB-16-MD-003 (filed July 26, 2016).

¹³ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, Second Report and Order, 22 FCC Rcd 15289, 15358, ¶ 190 n.430 (2007) (“700 MHz Order”).

competition and innovation.”¹⁴ But these parties do not even attempt to show how Verizon’s requested declaratory ruling would undermine these objectives. Indeed, it would have the opposite effect. As the petition explained, identity theft and fraud cost Verizon and consumers hundreds of millions of dollars every year, raising prices and inhibiting investment – a trend that a declaratory ruling could reverse.¹⁵

B. The Commission Should Declare That Temporary Locking of Handsets To Deter Theft and Fraud Does Not Constitute “Configuring” Handsets To Prohibit Use on Other Networks

The second aspect of the handset locking rule that warrants clarification is the requirement that a C Block licensee refrain from “configur[ing] handsets it provides to prohibit use of such handsets on other providers’ networks.” As the petition explained, “configure” means “to set up for operation in a particular way,” or “to construct or arrange in a certain way.”¹⁶ The anti-fraud approach that Verizon proposes does not involve “configuring” handsets to operate only on Verizon’s network or to “prohibit” their legitimate use on other networks. Instead, Verizon proposes to lock those handsets only temporarily, after which consumers could use those handsets on the networks of their choice, just as the C Block rules envision. As Appalachian Wireless correctly notes (at 3-4), this type of practice does not “prohibit” use of handsets on other providers’ networks. Rather, what Verizon proposes merely conditions such

¹⁴ Pine Belt Comments at 4 (quoting *700 MHz Order*, 22 FCC Rcd at 15364, ¶ 203); Public Knowledge Comments at 4.

¹⁵ See Verizon Petition at 9 (“[H]andset fraud cost [Verizon] approximately \$190 million in 2018, up from approximately \$115 million in 2017.”); *id.* at 2 (“When handset fraud occurs, Verizon loses nearly the entire value of each device, which raises the costs of providing service to all consumers.”).

¹⁶ Verizon Petition at 14 (citing Merriam-Webster.com, *Configure*, <https://www.merriam-webster.com/dictionary/configure>; *Configure*, WEBSTER’S NEW WORLD COLLEGE DICTIONARY (4th ed. 2010); *Configure*, THE AMERICAN HERITAGE DICTIONARY (5th ed. 2011)).

use on a temporary 60-day lock period, enabling Verizon to determine whether a new device was obtained by a legitimate customer, just as all other major wireless carriers do.

None of the other commenters attempts to grapple with the meaning of “configure” or the clear distinction between setting up or constructing a handset to permanently work only on one provider’s network and merely temporarily locking that handset. Although several commenters argue that the meaning of “configure” is clear, they do not specify what they believe that clear meaning to be.¹⁷ Nor do these commenters demonstrate how temporary locking would undermine the objectives of the handset locking rule. Indeed, even with the proposed temporary locking, Verizon would still lead the wireless industry in platform and device openness, and Verizon customers would have greater ability than the customers of any major wireless carrier to switch their handsets to their provider of choice.

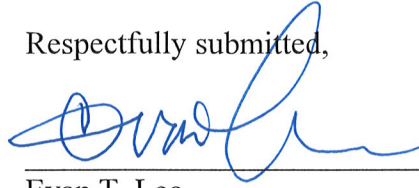
CONCLUSION

For the reasons set forth above and in Verizon’s petition, the Commission should take one or more of the following steps:

- 1) The Commission should issue a declaratory ruling that a temporary 60-day lock on handsets is consistent with Rule 27.16(e);
- 2) To the extent the Commission decides not to issue a declaratory ruling or decides that Verizon’s proposal is inconsistent with the handset locking rule in Rule 27.16(e), the Commission should grant Verizon a partial waiver of the rule to implement its temporary locking proposal.

¹⁷ See, e.g., Public Knowledge Comments at 3 (“the meaning of ‘customer’ and ‘configure’ are not ambiguous, as argued by Verizon . . .”); Double Perfect Comments at 3 (“By definition, locking handsets, temporarily or otherwise, configures them to prohibit use on other providers’ networks.”). Neither Public Knowledge nor Double Perfect seeks to provide a definition of “configure.” Public Knowledge offers a bare allegation that the word is unambiguous. Double Perfect merely makes a conclusory statement that locking qualifies as a form of configuring.

Respectfully submitted,



Evan T. Leo

William H. Johnson
Of Counsel

Tamara L Preiss
VERIZON
1300 I Street, N.W.
Suite 500 East
Washington, D.C. 20005
(202) 515-2540

Evan Leo
Sami M. Ahmed*
KELLOGG, HANSEN, TODD, FIGEL
& FREDERICK, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7930

**Not admitted in the District of
Columbia. Practice supervised by
members of the firm.*

Counsel for Verizon

April 19, 2019